



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

**6. Evidence (§ 568\*)—Opinions—Mental Capacity—Weight.**—The evidence of witnesses present when a deed was executed is more reliable in proving mental incapacity than the opinion of witnesses based on facts which may not result from mental unsoundness.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2394; Dec. Dig. § 568.\* 4 Va.-W. Va. Enc. Dig. 380.]

**7. Deeds (§ 68\*)—Capacity of Grantor—Old Age.**—The law prescribes no age limit beyond which one is incapacitated from executing a valid deed.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 149-155; Dec. Dig. § 68.\* 4 Va.-W. Va. Enc. Dig. 379; 7 id. 675.]

**8. Wills (§ 47\*)—Testamentary Capacity—Senile Failure of Memory.**—Testamentary capacity is not destroyed by failure of memory incident to old age.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 94; Dec. Dig. § 47.\* 13 Va.-W. Va. Enc. Dig. 711.]

**9. Deeds (§ 68\*)—Capacity of Grantor.**—A deed executed by a grantor of legally sound mind will not be set aside because the disposition of property made therein is unwise.

[Ed. Note.—For other cases, see Deeds, Dec. Dig. § 68.\* 13 Va.-W. Va. Enc. Dig. 391.]

**10.** The fact that the grantor had executed a will prior to the deed and inconsistent therewith, which was not destroyed, such will also bequeathing other property, does not affect the validity of the deed.

Appeal from Circuit Court, Russell County.

Suit by W. N. Howard and others against Joseph Howard and others to set aside a deed. From a decree for complainants, defendants appeal. Reversed, and bill dismissed.

*H. A. Routh* and *J. C. Gent*, for appellants.

*Finney & Wilson*, for appellees.

---

WAMPLER *v.* HARRELL et al.

Sept. 14, 1911.

[72 S. E. 135.]

**1. Deeds (§ 211\*)—Undue Influence—Sufficiency of Evidence.**—Evidence held not to show undue influence in the execution of a deed to the grantor's nephew.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 641; Dec. Dig. § 211.\* 13 Va.-W. Va. Enc. Dig. 389.]

**2. Judgment (§ 708\*)—Conclusiveness—Persons Concluded.**—In an

---

\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

action to set aside a deed on the ground of mental incapacity, the record of a suit brought some years before by the grantor against others than defendant involving her mental incapacity was not admissible in evidence, defendant not being a party to the former suit.

Ed. Note.—For other cases, see Judgment, Cent. Dig. § 1230; Dec. Dig. § 708.\* 4 Va.-W. Va. Enc. Dig. 380.]

**3. Evidence (§ 478\*)—Opinion Evidence—Mental Capacity—Weight.**—The evidence of persons present when a deed is executed is more reliable in determining mental capacity than the opinions of other witnesses based on facts which may not result from mental unsoundness.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2242-2244; Dec. Dig. § 478;\* Wills, Cent. Dig. §§ 113-115. 4 Va.-W. Va. Enc. Dig. 380.]

**4. Deeds (§ 68\*)—"Mental Capacity" of Testator.**—No particular degree of mental capacity is essential to enable one to execute a deed, the test being whether the grantor had at the time sufficient mental capacity to understand the nature of the transaction, and assent thereto.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 149-155; Dec. Dig. § 68.\* 4 Va.-W. Va. Enc. Dig. 378.]

For other definitions, see Words and Phrases, vol. 5, p. 4475.]

**5. Wills (§ 31\*)—"Mental Capacity"—Test.**—The test of whether testator had sufficient mental capacity to execute a valid will is whether at the time he understood the nature of the transaction, and intelligently assented to the provisions of the will.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 66-68; Dec. Dig. § 31.\* 13 Va.-W. Va. Enc. Dig. 710.]

**6. Deeds (§ 211\*)—Mental Capacity—Sufficiency of Evidence.**—Evidence held sufficient to show that a grantor had sufficient mental capacity to execute a deed.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 638-640; Dec. Dig. § 211.\* 4 Va.-W. Va. Enc. Dig. 380.]

**7. Wills (§ 55\*)—Mental Capacity of Testator—Sufficiency of Evidence.**—Evidence held to show that testator was mentally competent when a will was executed.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 137-161; Dec. Dig. § 55.\* 13 Va. W. Va. Enc. Dig. 713.]

**8. Deeds (§ 211\*)—Fraud—Sufficiency of Evidence.**—Evidence held not to show that the consideration for a deed was so grossly inadequate as to show fraud in its procurement.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 643; Dec. Dig. § 211.\* 4 Va.-W. Va. Enc. Dig. 387, 413.]

**9. Deeds (§ 212\*)—Vacating—Sufficiency of Evidence.**—Evidence

---

\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

in a suit to set aside a deed given for support of grantors held, to show that defendant had done everything that could reasonably be expected in complying with his obligations under the deed.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 650; Dec. Dig. § 212.\* 4 Va.-W. Va. Enc. Dig. 389.]

Appeal from Circuit Court, Wythe County.

Suit by Pollie Harrell and another against D. H. Wampler. From a decree for complainants, defendant appeals. Reversed, and bill dismissed.

*E. Lee Trinkle* and *W. B. Kegley*, for appellant.

*W. S. Poage*, for appellees.

---

KENT et al. v. DOBYNS et al.

Sept. 14, 1911.

[72 S. E. 139.]

**1. Easements (§ 8\*)—Private Way—Exclusiveness of Possession—Prescription.**—To claim a private way by adverse possession, the user must be exclusive in the sense that it does not depend for its enjoyment on similar rights in others, though others may also acquire a right of user of the way by prescription.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 23, 24, 33; Dec. Dig. § 8.\* 11 Va.-W. Va. Enc. Dig. 370.]

**2. Easements (§ 8\*)—Private Way—Prescription.**—To establish a private way by prescription, the use must be adverse, under a claim of right, and not permissive, exclusive, continuous, uninterrupted, and with the owner's knowledge and acquiescence, and must continue for at least 20 years.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 23, 24, 33; Dec. Dig. § 8.\* 11 Va.-W. Va. Enc. Dig. 370.]

**3. Estoppel (§ 98\*)—Estoppel by Conduct—User of Private Way.**—Defendant herein applied to have a certain way from his land over those of complainant's grantor established as a public road, and the court's order confirming the denial of the application recited that defendant had a sufficient road over the same location proposed as a public road, and that complainant's grantor, upon being examined, declared that he had given defendant permission to use the road, and had no intention of revoking it. Held, that the declaration of complainant's grantor would not estop complainant from asserting that defendant only used the road by permission and revoking his license to do so.

[Ed. Note.—For other cases, see Estoppel, Cent. Dig. § 290; Dec. Dig. § 98.\* 9 Va.-W. Va. Enc. Dig. 303.]

---

\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.